

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 600 of 2004

Bhaiya Lal, Aged about 35 years, S/o. Ayodhya Prasad Sahu, By
Caste Teli (Sahu) R/o. Village Badsara, P.S. Jhilimilli, Tahsil Surajpur,
District Surguja (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through the Police Station Bhaiyathan,
Tahsil Surajpur, District Surguja (C.G.)

---- Respondent

For Applicant : Mr. Aditya Khare, Advocate.

For Respondent : Mr. Amit Singh, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 13.02.2019

By the judgment under challenge passed on 26.11.2004 by
Additional Sessions Judge Surajpur, in Criminal Appeal No. 153 of
2004, the findings recorded by the learned Judicial Magistrate
First Class, Surajpur, have been modified.

2. Facts of the case, in short, are that on 02.06.2002 at about
6.30 AM, the complainant was going to Badsara from his house,
when he reached near the house of applicant Bhaiyalal Sahu
then the applicant stopped him on the way and assaulted on the
head with axe and applicant Ayodhya Sahu assaulted on the
back of the complainant with lathi and threatened to kill him.
On hearing the voice of the complainant Banwarilal, Ramadhar,

Guddu and Dinesh came there and intervened in the fight. FIR (Ex.P-1) lodged by complainant (PW-1) and after medical examination of the injured and after completion of investigation the charge sheet was filed against the accused/applicants.

3. Learned Magistrate having perused the material before it convicted the accused/applicant under Section 326 IPC and sentenced him as above, which on appeal has been affirmed by the judgment impugned. Hence, this revision.

4. Conviction is not being pressed on merit and the sole prayer made by the counsel for the applicants is confined to reduction of sentence imposed on the accused/applicants to the period already undergone on account of the fact that the case is quite old and the accused/applicants have already remained in jail for some time. State counsel however, supports the findings recorded by the both the Courts below.

5. Having heard counsel for the parties and perused the material available on record including the evidence of witnesses (PW-1), (PW-2), (PW-3) and Dr. R.N. Kerkatta (PW-6) who medically examined the victim and gave his report Ex. P-4 as well as Dr. N.K. Jain, (PW-5) - the radiologist who took x-ray of the victim vide report Ex. P-3, it becomes crystal clear that on the date of incident when the victim was going to Badsara from his house then the applicants stopped him on the way and assaulted him with axe and lathi. Evidence of PW-6 - the doctor who medically examined the victim and gave his report Ex. P-4 shows

that he noticed incised wound over frontal region above left eyebrow in the size of 5x2x1cm transversally margin everted and regular. Lacerated wound over parietal region in the size of 2x1cm transversally margin irregular. Lacerated wound over parietal region in the size of 2x1cm directed transversally margin irregular. Even the radiologist vide his report Ex. P-3 has opined the frontal bone of the head of the victim to be fractured. Seizure witnesses have also admitted his signature on the seizure memo Ex. P-3. Overall evidence thus establishes that on account of trivial dispute picked up first by the accused himself, he opened an assault on the victim causing injuries referred to above by a sharp cutting weapon and therefore, his conviction under Section 326 IPC is maintained.

6. As regards sentence, keeping in view the fact that the incident had taken place in the year 2002, that the accused/applicant has already remained in jail for a period of 2 months 11 days and further that by now he must be leading a well settled life saddled with innumerable responsibilities, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone.

7. With the above, the revision stands allowed in part.

Sd/-

(Vimla Singh Kapoor)

JUDGE